DOCKET NO. HHD-CV22-6156703-S	:	SUPERIOR COURT
MUAD HREZI, ET AL.,	:	JD OF HARTFORD
V.	:	AT HARTFORD
DENISE MERRILL, ET AL.	:	JULY 22, 2022

PLAINTIFFS' POST-TRIAL BRIEF

"No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."[1]

This is a state and federal constitutional civil rights action for injunctive relief challenging the burdens on freedom of speech, expression, association, and political rights imposed by Connecticut restrictions on access to the primary ballot for the office of U.S. Representative, facially and as-applied to the 2022 campaign of Muad Hrezi in the First Congressional District against incumbent John Larson.

The Court has received the testimony of the plaintiffs, their staff, and various exhibits. The state put forward no witnesses on the constitutional claims. Connecticut is the last state in the nation to never have a primary of a sitting U.S. Representative. Mr. Hrezi did everything he could to be the first candidate in history. To be sure, defendants are expected to point out that Mr. Hrezi's campaign made mistakes along the way. But the caselaw is clear that a candidate is not required to establish any level of diligence—let alone perfection—in attempting to satisfy a state's ballot-access regime. Because plaintiffs' constitutional rights were violated, this Court should issue an injunction ordering that Mr. Hrezi be granted access to the primary ballot in the 2022 election, as follows.

[1] *Williams v. Rhodes,* 393 U.S. 23, 31 (1968). *See also* THE FEDERALIST No. 37 (James Madison) ("The genius of republican liberty [is] not only that all power should be derived from the people, but that those entrusted with it should be kept in dependence on the people.").

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FACTS

Plaintiff Muad Hrezi. Plaintiff Muad Hrezi, a Connecticut State Championship runner at Naugatuck High School, Tr. 6/22/22 at 47-48, has raised over $500,000 to run for U.S. Congress against John Larson in the First Congressional District, Tr. 7/19/22 AM at 95. Mr. Hrezi is a Democrat and wants to run as a Democrat because it is his party. *Id.* at 110. As a party member, he wants someone to vote for other than Mr. Larson. *Id.* Mr. Larson is the longest serving member of Congress in the entire country without a primary. *Id.* at 111. Mr. Hrezi has been a formally announced candidate for Congress since January 2021. *Id.* at 124.

Gathering petition signatures needed to be done in-person in Connecticut in 2022. Tr. 6/22/22 at 21. An individual can only sign on the form given by the Secretary of the State. *Id.* at 22. The only place the form can be retrieved is the Secretary of the State's office. *Id.* No electronic method exists in 2022 for the collection of the signatures. *Id.* The petitions cannot be retrieved before April 26. *Id.* at 55.

On April 26, Mr. Hrezi went to the Secretary of the State's office as soon as it opened to retrieve the petitions. *Id.* at 22. He had accessed the Secretary of the State's website, printed out an application that was made available on their website, filled out the form, and went to their customer service desk. *Id.* at 22-23. Mr. Hrezi believed he had requested the forms by email. But Mr. Hrezi only received the forms by email after calling the office again two days later, on April 28. This Court has held that Connecticut statutory law does not require delivery of the forms, only their availability.

From April 28 to June 7, when the petitions were due, Mr. Hrezi's campaign did everything they could possibly think of to collect as many signatures as possible. *Id.* at 33. They went door knocking, went to big events where they expected people to be, attended

congregations of all faiths, sat outside bus stops, and tried everything possible. *Id.* There were no days off. *Id.* Days started as early as 5:30 in the morning in Downtown Hartford at the bus stop and finished as late as midnight as people were leaving Hartford Yard Goats games. *Id.* at 34. Mr. Hrezi's feet were sore every day. Tr. 7/19/22 AM at 100. Exhaustion and burnout were a threat if he or others had worked any harder. *Id.* at 121.

Mr. Hrezi enlisted the help of as many people as possible for the effort. Tr. 6/22/22 at 35. The campaign put up ads on the top job posting sites, including ZipRecruiter, Indeed, and Handshake. *Id; see also* Exs. 13-15, Q (full); Tr. 7/19/22 AM at 99. The campaign not only used the sites but paid for premium advertisements within the sites. Tr. 6/22/22 at 35. It was a tight labor market. *Id.* Petitioning is not an attractive job. *Id.* The working conditions are poor. *Id.* Many people do not want to do the work of knocking on doors in hot summer and talking to people who might turn you down or who may yell at you. *Id.;* Tr. 7/19/22 AM at 99. The campaign also recruited volunteers and paid fellows. *See* Exhibits K, L (full).

Many people who the campaign wanted to hire did a test run, and because of how rigorous the process is and the pressure, wouldn't show up. Tr. 7/19/22 AM at 100. Circulators were required to be registered Democrats or be willing to change their registration from unaffiliated to Democrat. *Id.* at 118. Bazila Munir, Deborah Cohen, John Fussell, Aurora Courtville, Casey White, Kristen Zabor, Sena Wazer, Muhammad ElSabbal, and others gathered petition signatures for the campaign. Tr. 7/19/22 PM at 1-4. Patrick Burden started collecting signatures on May 11; Tania Banks on May 17; Asra Kadous on May 18; Cyrene Tershani on May 18; Thomas Gilbertie on May 20; Alison Kajinka on May 20; Diamond Walker on May 20. Tr. 7/19/22 PM at 15-16.

The paid fellows could not have started any sooner because they had academic calendars and schedules. Tr. 7/19/22 AM at 95. Fliers were circulated before April 21st. Tr. 7/19/22 PM at 5. When they wrapped up school they started immediately. Tr. 7/19/22 AM at 95. The campaign was the most generous employer out there when it came to petitioning. *Id.* at 99. The paid fellows were paid $800 per month. *Id.* at 107.

There were other expenses as well. The campaign spent over $500 on paper alone. *Id.* at 97. The campaign paid for notaries because the petition pages needed to be notarized before they could be submitted. Tr. 7/19/22 AM at 106-107. Notaries cost $5 per page in most places. *Id.* at 107. Gas was a big cost. *Id.* Supplies and clipboards, including different sets of clipboards for when it was raining, were purchased. *Id.* at 107-108. The campaign purchased an electric scooter and an electric bike to accelerate the process of gathering signatures. *Id.* at 116. Adding all of the costs, including labor and gas reimbursements, the campaign estimated that it spent over $20,000 on the petitioning process alone. Tr. 6/22/22 at 76; see also at 92 (testimony of Bazlia Munir); Tr. 7/19/22 AM at 101.

Mr. Hrezi's campaign collected over 4,900 signatures. *Id.* That included people who were potentially registered Democrats who signed Mr. Hrezi's petition but who, for instance, had moved from Hartford to East Hartford but failed to change their registration. *Id.*

On average, the campaign collected 25 signatures per day during the first 14 days of the petitioning period. Tr. 7/19/22 PM at 24. During the second 14 days of the petitioning period, the campaign collected an average of 100 signatures per day. *Id.* at 25-26. During the final 14 days of the petitioning period, the campaign collected an average of 200 signatures per day. *Id.* at 26-27.

COVID-19 affected the number of signatures Mr. Hrezi's campaign was able to collect each day. Tr. 6/22/22 at 49. People were afraid to talk to strangers, afraid to touch pens, and fewer people were congregating at churches on Sundays, one of the best places to gather signatures historically. *Id. See also* Tr. 7/19/22 AM at 104-105. Four of Mr. Hrezi's staff got COVID-19 during the petitioning drive. *Id.* at 105. The campaign's COVID outbreak occurred during the last 15 days of the petitioning drive. Tr. 6/22/22 at 50. A fifth person quarantined because of close exposure. Tr. 7/19/22 AM at 105. People started feeling sick and getting positive COVID tests and even some of the staff who were near the COVID-positive staff also needed to quarantine. *Id.* at 50. One volunteer, Ahmed Imad, never petitioned because of COVID. Tr. 7/19/22 AM at 133; 7/19/22 PM at 28. Nick Accarpio tested positive for COVID-19 on May 24. Tr. 7/19/22 PM at 28. John Fussell tested positive on May 29. *Id.* Alison Kajinka tested positive on May 23. *Id.*

Most of the petitions were handed back to the Registrars of Voters long after they were completed, on the day they were due. *Id.* at 73-74. This was because there were 27 towns in the district and the registrars were not always present at their offices at the time listed on their websites. *Id.* The only time that registrars were required by law to be present in their offices was on the last day to hand in petition signatures, June 7, from 1pm to 4pm. *Id.;* see also Tr. 7/19/22 AM at 96. The registrars do not work full-time hours during the petitioning process. *Id.* at 74. Different towns operate under different hours. *Id.;* Tr. 6/22/22 at 73-74.

The campaign could not have hired an attorney any earlier because attorneys are expensive and it was a bootstrap campaign. Tr. 7/19/22 AM at 95. The budget was tight. *Id.* When the campaign realized that the process was severely burdensome and they would not obtain ballot access, they sued. *Id.*

Mr. Hrezi attempted to get on the ballot by convention. Tr. 6/22/22 at 46. He got 14 of over 400 delegates at the convention. *Id.* The convention process was even more burdensome on the campaign. Tr. 7/19/22 AM at 101. The campaign worked on the convention process from August of 2021 to the May 9, 2022 convention. *Id.,* 101-102. If Mr. Hrezi had more time or more money, he may have collected more signatures. *Id.* at 102. But more time or money would not have likely made a difference in the convention process. *Id.* DTC elections take place in a two hour window on weekdays when working people and people with kids or other obligations cannot attend. *Id.* at 112; Tr. 7/19/22 PM at 37.

Plaintiff Bazila Munir. Plaintiff Bazila Munir, a 22-year-old graduate of the University of Connecticut with a degree in political science, is Muad Hrezi's campaign manager. Tr. 6/22/22 at 79-80. Ms. Munir had never been involved in politics before this election. *Id.* Mr. Hrezi was "the first . . . candidate that [she] had seen" who reflected her values. *Id.* at 80.

Ms. Munir assisted the campaign in attempting to obtain ballot access by convention. *Id.* at 81. She reached out to the DTC chairs, tried to make introductions, and arrange for the campaign to speak at meetings. *Id.*

Ms. Munir assisted the campaign in gathering signatures. *Id.* at 82. She began an interview process, starting with creating an application format, getting the word out there to different student bodies, interviewing applicants, and training people after they were hired. *Id.* As the campaign got closer to the petitioning process, she put up job postings and began interviewing people. *Id.* She began reaching out to as many volunteers as possible. *Id.* at 82-83. Recruiting was limited by eligibility requirements. *Id.* at 83. Petitioners were required to be registered Democrats, and if unaffiliated, were required to switch their voter registration. *Id.* This caused a few issues with the campaign as well. *Id.*

The campaign hired 11 fellows for petition circulating during the petitioning period. Tr. 7/19/22 PM at 5. They were typically college students or recent college graduates. *Id.* They typically had no experience collecting petition signatures. *Id.* The campaign provided training for the fellows in how to circulate petitions. *Id.* at 84-85. The training included specifying how signers from different towns needed to sign different sheets of the petitions. *Id.* at 85. Even if you were a registered Democrat in the First Congressional District, if you signed the wrong sheet of paper or if your voter registration was incorrect, your signature would be invalidated. *Id.* at 85. Fellows were paid. *Id.* at 86.

Other than fellows, the campaign paid about 15 additional people to collect petition signatures. *Id.* Paid petitioners were all different ages. *Id.* They typically had no prior experience in gathering petition signatures. *Id*. The campaign provided training. *Id.* at 87.

One challenge faced by the campaign was that it was the first election after a decennial redistricting. *Id.* at 89. (It was only the second time in Connecticut history that petitions were part of the process in an election after a redistricting.) The weather also made it more difficult. *Id.* at 89-90. The campaign spent approximately $20,000 on petitioning. *Id.* at 92.

At the time plaintiffs commenced the lawsuit and at the time of trial, the Secretary of the State had not yet certified the number of petition signatures the campaign had validly collected. *Id.* at 90.

Plaintiff Muneeka Munir. Muneeka Munir, an 18-year-old student at Northeastern University, worked for Mr. Hrezi's campaign as a paid fellow. Tr. 7/19/22 AM at 32-52 (testimony in full). Ms. Munir went to events, public spaces, and talked to voters door-to-door to collect petition signatures. *Id.* at 33, 34. Ms. Munir began working on the petitioning drive more

than three weeks before the petitions were due. *Id.* On the day the petitions were due, Ms. Munir turned them in, in Hartford. *Id.* at 34. Ms. Munir collected well over 100 signatures. *Id.*

Collecting the signatures was physically burdensome even for 18-year-old Muneeka Munir. *Id.* at 34-35. Physically, it was exhausting because it involves talking to people in-person, it requires talking to many people, "sometimes people aren't very nice," *id.* at 34, and the experience required going repeatedly through the process multiple times per day, with long hours because of the high volume of signatures the campaign was required to collect. *Id.* at 34-35. Ms. Munir collected signatures for at least eight hours on any given day, and sometimes as many as twelve hours. *Id.* at 36. Collecting the signatures took Ms. Munir and other campaign workers away from other expressive activity, such as communications work, social media, and policy work. *Id.* at 35. Ms. Munir worked as hard physically as she could each day. *Id.* at 51.

COVID-19 made the petitioning process harder for Ms. Munir. *Id.* at 36. Although she did not test positive for COVID-19 during the petitioning time period, Ms. Munir needed to quarantine for several days due to another staff member testing positive. *Id.* This was particularly concerning for Ms. Munir because she has high-risk people in her family. *Id.*

Ms. Munir went into quarantine in mid-May, during the petitioning process, for three or four days. *Id.* at 36-37. Prior to going into quarantine, Ms. Munir was collecting approximately 50 signatures per day. *Id.* at 37. After going into quarantine, Ms. Munir was collecting approximately 50 signatures per day. *Id.* The highest number of signatures Ms. Munir collected in a day was 132. *Id.* at 50. But during the time she was quarantined, she was unable to collect any petition signatures. *Id.*

Even while collecting the signatures, some people were concerned about COVID-19, and getting too close to sign. *Id.* at 38-39. Some people did not want to use the same pen as the

circulators. *Id.* at 39. Throughout the process, Ms. Munir wore her mask, whether she was indoors or outdoors. *Id.* At least 20 people Ms. Munir encountered were unwilling to sign because of COVID-19. *Id.*

Ms. Munir and her fellow fellows would keep track of the number of signatures they were collecting through text messages. *Id.* at 43. The campaign paid Ms. Munir for her time. *Id.* at 44. Ms. Munir would have started collecting petition signatures earlier in the process, but is a student at Northeastern University and was not home until May. *Id.* at 50. In addition to collecting the signatures, the laws required Ms. Munir to get her petitions certified both before and after they were signed by voters. *Id.* at 51.

Plaintiff John Fussell. John Fussell, a 69-year-old labor lawyer, volunteered for Muad Hrezi's campaign to gather signatures. Tr. 7/19/22 AM at 53-63 (testimony in full). As a supporter of the campaign, Mr. Fussell has encouraged people to support Mr. Hrezi's campaign, contributed monetarily to the campaign, and during the petitioning process, he volunteered to collect signatures. *Id.* at 54. Mr. Fussell collected 115 or 116 signatures over the campaign. *Id.* It took him 12 days of petitioning, starting when he finished with work and going two to three hours. *Id.* One day he got as many as 15 signatures; other days, only two. *Id.*

Mr. Fussell, because of his age, was limited from gathering petition signatures in large public places, due to his concern about catching COVID-19. *Id.* at 55. Even though Mr. Fussell collected signatures while masked, and was double-boosted with vaccines, he had a reluctance to go out into large places, *id.*, even though he had more experience collecting signature sin places with large gatherings, *id.* at 56. So Mr. Fussell petitioned in his own neighborhood. *Id.* at 55. Mr. Hrezi's campaign provided Mr. Fussell with lists of enrolled party members in his area to gather signatures from, as soon as he asked for one. *Id.* at 56.

While canvassing his neighborhood, he learned that many of the families on his street had been infected with COVID-19. *Id.* at 60. Because they had COVID-19, or because they were concerned about COVID-19, many people refused to answer the door when Mr. Fussell knocked. *Id.* Mr. Fussell encountered a reluctance to talk, to come to the door, or to open the door. *Id.* at 56. Sometimes, even after knocking on a door multiple days in a row, Mr. Fussell was unable to make contact with anyone. *Id.* This stood in stark contrast to Mr. Fussell's experience going door-to-door as a union organizer during his career. *Id.* at 62-63.

Mr. Fussell contracted COVID-19 during the petitioning period. *Id.* at 56. His wife, who did not gather petitions, did not contract the virus. *Id.* at 57. He was working at that time, but was not really going into public or other places, except to petition. *Id.* at 61. Most of his arbitrations were done through Zoom, and he did not have clients coming into his office. *Id.* When Mr. Fussell contracted COVID, he isolated for ten days, stopped petitioning, and was out for the rest of the petitioning process. *Id.*

Nicholas Accarpio. Nicholas Accarpio, a 20-year-old student matriculating to the University of Connecticut in the fall, was a paid fellow for the campaign. Tr. 7/19/22 AM at 64-74 (testimony in full). Fellows like Mr. Accarpio went to public spaces and door-to-door to get signatures from registered Democrats during the petitioning period. *Id.* at 65. Mr. Accarpio began on May 11 and gathered signatures every day of the petitioning period, except for when he was quarantined with COVID-19. *Id.* He worked eight hours a day. Id. at 69. The campaign paid him $800 per month, plus reimbursements for gas and other expenses. *Id.* at 71. Before May 11, Mr. Accarpio was unavailable because of school. *Id.* at 65.

Mr. Accarpio's best petitioning day yielded 47 signatures. *Id.* at 65. Gathering petitions is a sill and something you learn about and get better at. *Id.* Mr. Accarpio could not have worked

any harder for Mr. Hrezi physically. *Id.* at 66. There were times he would knock on the door and someone would say through a window that they couldn't talk because they were concerned about COVID. *Id.* at 67. Other people appeared to have COVID and didn't want to give it to Mr. Accarpio. *Id.* Mr. Accarpio himself was concerned about COVID during the process, because he has an at-risk sister who lives with him at home. *Id*

During the petitioning process, Mr. Accarpio contracted COVID-19. *Id.* at 66. On May 24, Mr. Accarpio planned to put in a full day of petitioning, when he noticed he had a sore throat. *Id.* He got tested, and the test came back positive. *Id.* Mr. Accarpio needed to quarantine for five days. *Id.*

In addition to going to voters to gather the signatures, Mr. Accarpio was also required to get the petition pages signed by the registrar in the town he lived in. *Id.* at 68. This was no easy task for Mr. Accarpio in his hometown of Berlin, because the registrar was only there on specific days at specific times. *Id.* at 68-9. Circulators were also required to guarantee that, by signing on the sheet at the end. *Id.* at 68. Voters could only sign a sheet designated to the town where they lived. *Id.* This required circulators like Mr. Accarpio to carry multiple sheets of paper, for multiple towns in the First Congressional District, whenever gathering signatures in public places. *Id.* at 68. Once the signatures were gathered, each sheet had to be notarized by a notary public. *Id.* at 69. The campaign would have a notary available for Mr. Accarpio. *Id.*

Debra Cohen. Debra Cohen is a retiree and member of the Democratic Town Committee in Wethersfield who volunteered for Mr. Hrezi's campaign. Tr. 7/19/22 AM at 75-94 (testimony in full). Ms. Cohen spoke to members of her DTC to encourage them to support Mr. Hrezi's attempt at ballot access. *Id.* at 78-79. Ms. Cohen attempted to become a delegate for the party nominating convention for the First Congressional District. *Id.* at 79. She was not selected. *Id.* at

81. To her knowledge, there was nothing Mr. Hrezi could have done to change the delegates to the convention. *Id.* at 84. As a DTC member, she never got to vote on the delegates to the convention. *Id.*

Ms. Cohen collected petition signatures for Mr. Hrezi. *Id.* at 84-85. She collected about 60 overall. *Id.* at 85. She collected them during the last two and a half or three weeks of the petitioning period. *Id.* at 85. She was unable to do much walking so any day she went out it really depended on how well she was feeling. *Id.* Walking was not always possible for her. *Id.* A number of people would come to the door and say they could not speak with her. *Id.* In prior years in which Ms. Cohen collected petition signatures door-to-door, there was a higher rate of people answering their doors. *Id.* at 85-86.

State's Evidence. The state only called one witness, on the first day of the trial, June 22, Ted Bromley, the Connecticut Director of Elections. He testified that the state is concerned about providing ballots for the military and voters overseas. Tr. 6/22/22 at 105. However, Democrat servicemembers will not be provided ballots for a federal primary at all if Mr. Hrezi does not prevail in this case. *Id.* at 105-106. The state can apply for a hardship waiver if it has difficulty complying with federal deadlines regarding military and overseas ballots. *Id.* at 106.

Entire pages of petitions can be thrown out if they are submitted to the wrong town. *Id.* at 110. They can be thrown out if the circulator has incorrectly filled out the attestation on the back of the petition. *Id.* at 110-111. Petition pages can also be thrown out if they are turned in even a few minutes after 4pm on the day they are due. *Id.* at 111.

As the Director of Elections for the entire State of Connecticut, Mr. Bromley oversees a staff of 12 people. *Id.* at 116. Mr. Bromley assisted his staff in compiling the number of signatures Mr. Hrezi had collected. *Id.* at 116-117. The campaign gathered 4,950 signatures. *Id.*

at 117. According to the registrars of voters, 3,253 were accepted as valid, and 1,683 were rejected as invalid. *Id.* The campaign would have needed an additional 580 valid signatures to qualify for primary ballot access. *Id.* at 118. One hundred and ten signatures that were rejected were handed in within minutes of the deadline, though something fewer than 110 may have been valid among those that were rejected for being untimely. *Id.* at 126. The state wants anyone who is rightly qualified for the ballot to have ballot access. *Id.* at 121.

One of the registrars of voters had not yet sent a count of Mr. Hrezi's signatures to the Secretary of the State's office by the time of trial. *Id.* at 124-125. Registrars of voters have failed to meet deadlines on other occasions. *Id.* at 125. In reviewing petition pages, at the time of trial, there were still possible signatures in dispute that may affect the count. *Id.* at 127.

The statutory framework in Connecticut provides no process by which candidates can challenge the registrars of voters' rejection of individual signatures. *Id.* at 129. There's no authority for the Secretary of the State to overturn a registrars' erroneous rejection of a petition signature. *Id.* at 130. To challenge the rejection of signatures, a candidate needs to challenge each rejection in the specific town in which the signature was rejected, in this case, potentially all 27 towns. *Id.* at 130.

State Party Rules (Exhibit J, full). The Democratic State Central Committee Party Rules were entered as a full exhibit. Notably, although the Party Rules refer to candidates needing to get 2% of the enrolled party members' signatures in their district to qualify for a primary for the office of U.S. Representative, Ex. J at 24, none of the other restrictions on petitioning imposed by Connecticut law are contained anywhere in the party rules. Nowhere in the party rules is there any mention of a requirement that petition pages be notarized. Nowhere in the party rules does it indicate that the party is against unaffiliated voters or Republicans gathering petition signatures.

Nowhere in the party rules does it indicate that to have a significant modicum of support within the party, a candidate for U.S. Representative must collect 2% of enrolled party members' signatures in 42 days, or for that matter, nowhere is there any time requirement.

CONSTITUTIONAL LAW OF BALLOT ACCESS

Ballot access laws affect "two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively." *Williams v. Rhodes*, 393 U.S. 23, 30 (1968). The rights at issue here—"to associate for the advancement of political beliefs" and for "qualified voters . . . to cast their votes effectively"—"rank among our most precious freedoms." *Williams*, 393 U.S. at 30. The right for registered voters to cast an effective vote "is of the most fundamental significance under our constitutional structure." *Burdick*, 504 U.S. at 433.

In *Lubin v. Panish*, 415 U.S. 709, 714-16 (1974), the Supreme Court struck down as unconstitutional a California law that required the payment of a $701.60 filing fee to be placed on the ballot in a primary election. The Court declared that the states legitimate interest in eliminating frivolous candidates "must be achieved by a means that does not unfairly or unnecessarily burden . . . an individual candidate's equally important interest in the continued availability of political opportunity." *Id.* at 716. Conditioning candidacy on the ability to pay, without providing an alternative means of securing access to the ballot for indigent candidates, was "not reasonably necessary to the accomplishment of the State's legitimate election interests." *Id.* at 718.

Because "[r]estrictions on access to the ballot burden two distinct and fundamental rights," the Supreme Court has applied strict scrutiny to ballot access requirements that are

burdensome, holding that they are constitutional only if the "classification [was] necessary to serve a compelling [state] interest." *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1971). As a result, "[s]tates [must] adopt the least drastic means to achieve their ends." 440 U.S. at 186-187 (citing *Lubin*).

The Supreme Court of the United States has set out the so-called *"Anderson-Burdick"* framework for the determination of the constitutionality of state ballot access laws. *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992). Under the *Anderson-Burdick* framework, this Court should first "ascertain the extent to which the challenged restriction burdens the exercise of the speech and associational rights at stake." *Yang v. Kosinski*, 960 F.3d 119, 129 (2d Cir. 2020). After the Court has "resolved this first question," it should "proceed to the second step, in which [the Court] appl[ies] one or another pertinent legal standard to the restriction." *Ibid.* If the laws are "severe," the Court must apply strict scrutiny. *Ibid.*

At least one state, under its state constitution, subjects *all* ballot access laws to strict scrutiny, regardless of the outcome of the "first step" of the *Anderson-Burdick* test. *See, e.g.*, *Sonneman v. State*, 969 P.2d 632, 638 (Alaska 1998) (citing *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982) ("Strict scrutiny review is necessary in ballot access cases . . . ."). That is the legal standard proposed by the plaintiffs for their state constitutional claims.

COVID-19 has significantly affected voting in the United States. For the first time in United States history, most voters cast their ballots by mail in 2020. Connecticut is no exception to the sea change in elections caused by COVID-19. In 2022, Connecticut changed its laws to allow for greater mail-in voting, Public Act 22-2, and this November, voters will vote on an amendment to the state constitution to allow for greater early and absentee voting as well.

CONNECTICUT LEGAL BACKGROUND

The Statutory Framework Since *Campbell v. Bysiewicz*

On January 29, 2003, the United States District Court for the District of Connecticut invalidated Connecticut's then-operative laws governing which individuals could appear on the Republican and Democratic primary ballots seeking to appear as their parties' nominees on the general-election ballot. *See Campbell v. Bysiewicz*, 242 F. Supp. 2d 164, 178 (D. Conn. 2003). The nominees of any "major party" are entitled to appear automatically on the general election ballot for the office.

The only avenue for those seeking congressional office to appear on their parties' primary ballot was to "show support of their candidacy by 15% of the convention delegates" at a nominating convention. *Campbell*, 242 F. Supp. 2d at 167. Each convention delegate for a particular town, in turn, was subject to election through a primary of party members from that town. *See ibid.*

The district court in *Campbell* concluded that the 15% requirement was unconstitutional because, among other reasons, "it so limits the number of candidates who can qualify to appear on primary ballots as to well nigh eliminate candidate opportunity and voter choice." 242 F. Supp. 2d at 174.

Connecticut did not appeal the *Campbell* decision because—as then-Attorney General Richard Blumenthal later explained to the General Assembly's Administration and Elections Committee—the state executive branch "believe[d] that the ultimate result [of the case] is the right one." CT Comm. Tran., GAE 2/10/2003; *see also* CT H.R. Tran., 5/28/2003 (Rep. O'Rourke) (noting that "the two parties, the Democrats, the Republicans, our Attorney General,

our Secretary of State, all agreed not to challenge Judge Dorsey's decision and to leave his finding in effect").

The General Assembly therefore began its consideration of potential changes to state law that, as General Blumenthal explained, were "no longer optional," but now were "mandatory" after the *Campbell* decision. CT Comm. Tran., GAE 2/10/2003; *see also* CT Comm. Tran., GAE 2/10/2003 (testimony of then-Secretary of State Susan Bysiewicz) ("[w]e've had the federal court tell us that we must move forward and open up our process").

Secretary Bysiewicz emphasized, however, that revision of the primary-ballot-access laws was "long over due," CT Comm. Tran., GAE 2/10/2003, and that reforms to "open up our process" were particularly significant because Connecticut had "one of the most restricted ballot access laws in the country," CT Comm. Tran., GAE 2/10/2003; *see also* [CT Comm. Tran., GAE 2/10/2003] (Blumenthal) ("The court [in *Campbell*] has struck down the system that we have now, one of the most restrictive in the country, if not the most restrictive as the Secretary of the State has said.").

Members of the General Assembly did not hesitate to indicate their displeasure at having to amend the election law, faulting the state executive branch for having declined to pursue an appeal of the *Campbell* decision. *See* CT S. Tran., 6/2/2003 (Sen. DeFronzo) ("one of the reasons why we're here solving this problem legislatively is that neither of the parties who had the opportunity appeal this, chose to take an appeal"); *id.* (Sen. McKinney) ("[M]uch to my chagrin, our two major parties in the state chose not to appeal the decision of Judge Dorsey. I think the parties should have appealed the decision.").

The revised statute that the General Assembly ultimately enacted—Public Act 03–241—provides that, regardless of the results at the party nominating convention, a congressional

candidate can qualify for his or her parties' primary ballot by "circulat[ing] a petition and obtain[ing] the signatures of at least two per cent of the enrolled members of such party in the [relevant] district." Conn. Gen. Stat. § 9–400(b). Several aspects, and limitations on, the ability of candidates to qualify through the petitioning process are relevant here.

1. Signature Collection.

In *Campbell*, the district court invalidated Connecticut's limitation on the individuals who could circulate petitions—which, at the time, was an option for municipal races—to registered party members in the relevant municipality. *See* 242 F. Supp. 2d at 170–71. When Public Act 03–241 adopted the petitioning procedures for congressional office, it also imposed a modified version of the residency requirement, limiting the petition circulators to "enrolled party member[s] of a municipality in this state." Conn. Gen. Stat. § 9–404b(d).

The statute further provides that "[e]ach petition page shall contain a statement signed by the registrar of the municipality in which the circulator is an enrolled party member attesting that the circulator is an enrolled party member in the municipality," and that "[e]ach separate page of the petition shall contain a statement as to the authenticity of the signatures on the page and the number of such signatures, and shall be signed under the penalties of false statement by the person who circulated the page." *Ibid.*

The latter provision in the statute requires the circulator to "attes[t] that each person whose name appears on the page signed the petition in person in the presence of the circulator" and "that the circulator either knows each such signer or that the signer satisfactorily identified himself or herself to the circulator." *Ibid.* In addition, "[e]ach separate page of the petition shall also be acknowledged before an appropriate person as provided in section 1-29"—that is, a

notary public. *Ibid.* The failure to follow any of these requirements results in rejection of the relevant petition page or pages by the Secretary of State. *See ibid.*

Finally, the statute provides that "[n]o page of such a petition shall contain the names of enrolled party members residing in different municipalities and any petition page that has been certified by the registrars of two or more municipalities shall be rejected by the Secretary."

2. Time Period for Petitioning.

Connecticut law provides that U.S. House candidates have a period of 42 days to procure petitioning forms from the Secretary of State's office and to submit the signed and notarized forms to individual registrars of voters in the towns within the district.[2] Although the State Defendants steadfastly defend the 42-day petitioning period, they ignore that the original version of the bill—as endorsed by Secretary Bysiewicz, General Blumenthal, and the working group convened to discuss statutory revisions—would have provided more than double that amount of time. As originally proposed, the bill would have provided congressional candidates with more than three months to collect the requisite number of signatures.[3]

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[2] *Compare* Conn. Gen. Stat. § 9–404a ("Petition forms for candidacies for nomination by a political party to . . . the district office of representative in Congress shall be available from the Secretary of the State beginning on the one-hundred-fifth day preceding the day of the primary for such . . . district offic[e].") *with id.* § 9–400(b) (requiring submission of "said petition not later than four o'clock p.m. on the sixty-third day preceding the day of the primary for such office").

[3] *Compare* H.B. 6372 § 1 (Jan. 30, 2003) ("Petition forms for candidacies for nomination to . . . the district office of representative in Congress shall be available from the Secretary of the State beginning the first business day in January in even-numbered years.") *with id.* § 26(a) (requiring submission of "said petition not later than four o'clock p.m. on the fourteenth day following the close of the district convention"). Under the original bill, the district convention would have been required to be held between 97 and 109 days before the primary, *see id.* § 19, and the primary would have been held on the fourth Tuesday in June, *see id.* § 37. As an example, in 2022, the fourth Tuesday in June was June 28, and therefore the original bill would have required the district convention to be held between March 11 and 23. A candidate seeking to qualify for the congressional primary ballot through the petitioning process would therefore have had between 69 and 81 days to collect and submit the required signatures.

The State Constitution

The Connecticut Constitution jealously guards the freedom of speech, association, and expression, the freedoms at issue in this case, in a manner more protective than the United States Constitution on its own. The Connecticut Supreme Court has repeatedly recognized that the Connecticut Constitution envisions "more protection to freedom of speech" than the United States Constitution. *E.g., State v. Linares*, 232 Conn. 345, 381 (1995); *Trusz v. UBS Realty Investors, LLC*, 319 Conn. 175, 195 (2015).

In evaluating whether the Connecticut Constitution affords greater protection to individual rights than the United States Constitution, Connecticut courts consider the familiar *Geisler* factors, including in matters involving freedom of speech and expression. *Linares*, 232 Conn. at 379. The six *Geisler* factors are:

(1) The text of the relevant constitutional provisions,

(2) This state's precedents;

(3) Persuasive federal precedent;

(4) Persuasive precedents from other states;

(5) Historical insight into the intent of the constitutional drafters; and

(6) Relevant public policies. *Id.*

The *Geisler* analysis is employed with an understanding that "our state constitution is an instrument of progress," *State v. Rizzo*, 266 Conn. 171, 207 (2003), such that "decisions of the United States Supreme Court defining fundamental rights are persuasive authority to be afforded respectful consideration, but they are to be followed by Connecticut courts only when they provide *no less individual protection than is guaranteed by Connecticut law*." *Id* (emphasis added).

Accordingly, our courts "have concluded in several cases that the state constitution provides broader protection of individual rights than does the federal constitution." *Id. See also generally Connecticut Coal. for Just. in Educ. Funding, Inc. v. Rell*, 295 Conn. 240, 271, n.26 (2010) (using *Geisler* in a "structured and comprehensive approach" to conclude that students have a fundamental right to an adequate and equitable public school education in Connecticut).

ARGUMENT

I. CONNECTICUT'S PRIMARY BALLOT ACCESS LAWS IMPOSE A FACIALLY "SEVERE" BURDEN ON CANDIDATES AND THEIR SUPPORTERS' FIRST AND FOURTEENTH AMENDMENT RIGHTS

Connecticut's laws restricting the ability of candidates to appear on their parties' primary ballot impose a "severe" burden on the First and Fourteenth Amendment rights of candidates and their supporters. Connecticut has never had a primary of an incumbent U.S. House Representative in its history. Connecticut's primary ballot access laws, in their full combination, "operate to freeze the political status quo" with regard to that office. *Jenness v. Fortson*, 403 U.S. 431, 438, 91 S. Ct. 1970, 1974, 29 L. Ed. 2d 554 (1971) (distinguishing Georgia ballot access laws from Ohio ballot access laws, in part, because Georgia allowed six months to gather signatures and did not require notarization of petition pages). As the Supreme Court of the United States has emphasized, the relevant inquiry in determining whether a particular ballot-access burden is severe is whether "a reasonably diligent . . . candidate [could] be expected to satisfy the signature requirements, or will it be only rarely that [a] . . . candidate will succeed in getting on the ballot?" *Storer v. Brown*, 415 U.S. 724, 742 (1974). Connecticut's history on this point makes the answer clear. *See*, *e.g.*, *Graveline v. Benson*, 993 F.3d 524, 543 (6th Cir. 2021)

(applying strict scrutiny after noting that "independent candidates have *never* qualified for the Michigan ballot").[4]

The State Defendants argue that "Connecticut's primary ballot access laws are valid on their face" under the federal court's decision in *Gottlieb v. Lamont*, Dkt. No. 3:20-CV-00623 (JCH), 2022 U.S. Dist. LEXIS 22063 (D. Conn. Feb. 8, 2022). State Def. Pre-Trial Br. 2. This Court is not bound to follow the Gottlieb decision, but more significantly that case was focused on a challenge to the number of signatures required and the time in which those signatures must be collected; in this case, by contrast, Plaintiffs have challenged several other restrictions imposed by Connecticut law on the petitioning process, which further demonstrate that the process imposes a severe burden on their constitutional rights.

As the State Defendants conceded, *see* State Def. Pre-Trial Br. 32, the severity of these burdens must be judged by the combined effect of the "various restrictive provisions" as a whole—that is, taken "together"—rather than evaluating whether any given restriction, standing alone, might not be severe. *Williams*, 393 U.S. at 25. *See also Clingman v. Beaver*, 544 U.S. 581, 599 (2005) (O'Connor, J., concurring in part and concurring in the judgment) ("A realistic assessment of regulatory burdens on associational rights would . . . require examination of the cumulative effects of the State's overall scheme governing primary elections . . . ."); *Graveline v. Benson*, 992 F.3d 524, 536 (6th Cir. 2021) ("[W]e must consider 'the combined effect of the

[4] The "reasonable diligent . . . candidate" is an *objective* inquiry into what a candidate might achieve acting with reasonable diligence. *See Crawford v. Marion County Election Bd.*, 553 U.S. 181, 202–03 (plurality op.) (considering "only the statute's *broad* application to *all* Indiana voters"); *id.* at 205 (Scalia, J., concurring) (magnitude of burden is assessed "categorically").

To the extent defendants seek to impose some "diligence" requirement as a prerequisite for the plaintiffs to assert their claims, that argument is mistaken—a point indicated nicely in *Anderson* itself, where the candidate prevailed on his claims even though he was two months late in submitting signatures and had not even begun the signature-collection process until the deadline had passed. *See* 460 U.S. at 782.

applicable election regulations,' and not measure the effect of each statute in isolation." (citations omitted));.*Republican Party of Ark. v. Faulkner County*, 49 F.3d 1289, 1291 (8th Cir. 1995) (invalidating state election laws based on the "combined effect of these requirements). Taken together, Connecticut's primary ballot access laws impose a "severe" burden on plaintiffs' rights.

Under Connecticut law, congressional candidates seeking to qualify for their party's primary ballot through the petitioning process are required to obtain the signatures of 2% of the registered members of their party within a 42-day window. See Conn. Gen. Stat. § 9–400(b). That requirement—which amounted to 3833 signatures in Mr. Hrezi's case, see 07/19/22 a.m. Tr. 103:23 (Muad Hrezi), or more than 91 signatures per day for each and every day of the petitioning window. That requirement departs sharply from the ballot-access requirements imposed by Connecticut's sister states.

In Indiana, a person merely must declare they want to run in the primary. There are no other requirements. In. St. 3-8-2-2. (No utter chaos has ensued.) You can buy your way onto the ballot in 21 states without any petitioning whatsoever – and no state requires a filing fee even approaching the magnitude of the approximately $20,000 spent by Mr. Hrezi on his petitioning drive.[5]

[5] States that allow primary ballot access--for only a filing fee--to major party candidates for US House of Representatives include: Alabama, Alaska, Arkansas, California, Delaware, Georgia, Idaho, Maryland, Minnesota, Mississippi, Missouri, Montana, North Carolina, Oklahoma, Texas, Utah, Washington, and Wyoming. *See* AL ST § 17-13-103 ($3,480), AK ST § 15.25.050(a) ($100), AR ST § 7-7-301(a) ($10,000, the highest in the country), CA ELEC § 8103(2) ($1,720), DE ST TI 15 § 3103(b) ($3,480), GA ST § 21-2-131(a)(1)(A) ($5,220), ID ST § 34-605(4) ($300), MD ELEC LAW § 5-401(6) ($100), MN ST § 204B.11(subd1)(1) ($300), MS ST § 23-15-297(h) ($500), MO ST 115.357(2) ($100), MT ST 13-10-202(4) ($1,740), NE ST § 32-608(2)(a) ($1,740), NV ST 293.193(1) ($300), NC ST § 163-107(a) ($1,740), OK ST T. 26 § 5-112(c) ($1,000), TX ELECTION § 172.024(a)(3) ($3,125), UT ST § 20A-9-201 ($485), WA ST 29A.24.091(1) ($1,740), WV ST § 3-5-8(1) ($1,740), WY ST § 22-5-208 ($200).

The State Defendants argue that the approaches adopted by other states are irrelevant in assessing the magnitude of the burden imposed by Connecticut law. *See* State Def. Br. 42. The fact that Connecticut has adopted the most restrict primary-ballot-access regime the country does not, as the district court noted in *Gottlieb II*, "necessarily" mean that Connecticut's laws impose a severe burden. 2022 U.S. Dist. LEXIS 22063, at *41. But that is a far cry from saying a comparison with other states' laws is irrelevant in determining the magnitude of the burden. To the contrary, the *Anderson-Burdick* caselaw is replete with decisions evaluating the burdens imposed by a particular state's ballot-access laws in light of the ballot-access regimes in other states.

The Supreme Court of the United States has repeatedly looked to out-of-state legal regimes in deciding whether a state's ballot-access laws impose a severe burden. *See*, *e.g.*, *Jenness v. Fortson*, 403 U.S. 431, 439 & nn.15–20 (1971) (evaluating the burdens imposed by Georgia ballot-access laws by comparison with laws from California, Colorado, Louisiana, New York, Rhode Island); *Am. Party of Tex. v. White*, 415 U.S. 767, 791 n.21 (1974) (considering Texas's ballot-access laws in light of election turnout in California, Florida, and Massachusetts). The same is true for the federal courts of appeals. In *Lee v. Keith*, for example, the Seventh Circuit examined Illinois's ballot-access laws not just with respect to "the stifling effect they have had on independent legislative candidacies," but also as those laws were "measured by comparison to the ballot access requirements in the other 49 states." 463 F.3d 763, 768 (7th Cir. 2006).

In some of these states, candidates can elect between paying a filing fee and gathering signatures. But in those states, the signature requirements are not strict: In Texas and Ohio, the candidate can avoid the filing fee by collecting 500 signatures. TX ELECTION § 172.025; ID ST § 34-626(b). Similarly, Minnesota demands a $300 fee or 1,000 signatures. MN ST § 204B.11(subd1)(1); MN ST § 204B.11(subd.2)(b).

In states that require petitioning, Connecticut stands out. Connecticut's additional restrictions on the process of collecting signatures further confirm that its ballot-access-laws impose a severe burden on Plaintiffs' constitutional rights.

Under Connecticut law, only an "enrolled party member[s] of a municipality in this state" can validly collect signatures during the petitioning process. Conn. Gen. Stat. § 9–404b(d). This provision artificially limits the number of individuals that a campaign could conceivably use in collecting petitions: It excludes any member of another party and all independent voters from the signature-collection process, unless they were willing to change their party affiliation, as well as any individual—of any party affiliation—who does not live in Connecticut. 07/19/22 a.m. Tr. 118:25–119:6, 120:10–17 (Muad Hrezi).

Particularly when campaigns' ability to obtain additional signature collectors is already so limited, this provision imposes a severe burden. *See Lerman v. Bd. of Elections*, 232 F.3d 135, 145–53 (2d Cir. 2000) (applying strict scrutiny to invalidate residency requirement for petition circulators); *Campbell*, 242 F. Supp. 2d at 170–71 (invalidating residency requirement for petition circulators under prior Connecticut law).

Connecticut law also requires that signatures must be collected in person. *See* Conn. Gen. Stat. § 404b(d). Even apart from the risks posed by COVID, the requirement to collect signatures in person expands the burdens involved in the petitioning process by a vast margin. Rather than rely on electronic signatures, as Connecticut allowed in the 2020 election cycle, petition circulators must now engage in labor-intensive work going door to door, to public spaces, or to community gatherings to collect the requisite signatures. Indeed, one of the key difficulties that the Hrezi campaign encountered in attempting to hire additional signature collectors was that few people were willing to undertake such an onerous job.

The notarization requirement, and the provision limiting signatures on each page to a single town, simply exacerbate these burdens. *See* Conn. Gen. Stat. 404b(c)–(d). Taken as a whole, these provisions in Connecticut's primary-ballot-access laws worth together to severely burden Plaintiffs' First and Fourteenth Amendment rights.

The number of signatures required by Connecticut is extraordinary. Connecticut required Mr. Hrezi to gather more than 90 signatures per day every day for a 42-day period, with no days off. Hawaii requires a $75 fee and 25 signatures from registered voters in the district, total. HI ST § 12-6(1); HI ST § 12-5(a). Tennessee requires 25 registered voter signatures, total, to get on the primary ballot. TN ST § 2-5-101(b)(1). Ohio requires a $50 filing fee and 50 signatures. OH ST § 3513.10; OH ST § 3513.05. New Jersey demands 200 signatures—that's it. NJ ST 19:23-8. Vermont and Rhode Island allow candidates on the primary ballot with 500 signatures. VT ST T. 17 § 2355(1); RI ST § 17-14-7. Although it is apparent that Connecticut requires more signatures in less time than any other state in the nation, it does not require a 50-state survey to see that Connecticut's laws are severe on their face.

Yet even if it otherwise were unclear whether Connecticut's primary-ballot access impose a severe burden, the evidence presented at trial demonstrates the severity of the burden. After he received the petitioning forms from the Secretary of State's office on April 28, Mr. Hrezi, his campaign staff, volunteers, and paid petitioners worked tirelessly through June 7 to collect as many signatures as possible. As multiple witnesses testified, the campaign and its supporters sought to gather signatures by knocking on doors throughout the district, attending events where potential signatories were expected to be, setting up signature-collecting operations in parks and other public spaces, and visiting religious congregations of all faiths. *See* 07/19/22

a.m. Tr. 34:17–20, 35:20–21, 35:24–27 (Muneeka Munir); *id.* at 55:13–23 (John Fussell); *id.* at 65:3–5 (Nicholas Accarpio); *id.* at 85:3–4 (Debra Cohen).

Mr. Hrezi testified, for example, that he personally circulated petitions on every single day from April 28 until June 7. *See* 07/19/22 a.m. Tr. 16–17. During this time, he woke up at 5:30 a.m. and went to bed at midnight. *Id.* at 121:4–5; *see also id.* at 121:25–27. His feet were sore every single day during the petitioning period. *See id.* at 100:9. And he did not believe there was anything else he or his team could have done to increase the number of signatures collected, particularly considering the risk of exhaustion and burden. *See id.* at 121:4–12.

Plaintiff Muneeka Munir testified that, in her role as a campaign fellow, she gathered signatures on each day from May 11 until June 7, *see* 07/19/22 a.m. Tr. 33:12, 34:3–5, with the exception of several days that she was required to quarantine following close contact with an individual who had tested positive for COVID-19, *see id.* at 36:21–23. During that period, she would "usually . . . work at least eight hours" "every day," and "as many as twelve" hours. *Id.* at 36:3–4; *see also id.* at 42:3–6. She explained that the "high volume of signatures [the campaign was] required to collect" resulted in "long hours," which were "[p]hysically . . . exhausting." *Id.* at 34:24–35:2. Nonetheless, Muneeka emphasized, she "tried [her] very best to [her] physical capabilities that [she] could each day" to collect signatures. *Id.* at 51:4–5.

Nicolas Accarpio, another campaign fellow, testified that he gathered signatures every day from May 11 until June 7, *see* 07/19/22 a.m. Tr. 65:13–14, except for the five-day period after he testified positive for Covid, *see id.* at 65:14–15, 66:7–22. Mr. Accarpio that he could "[n]ot physically" have worked any harder than he did for the Hrezi campaign. *Id.* at 66:5–6.

Debra Cohen, a campaign volunteer, testified that she was able to gather signatures for two or two-and-a-half weeks—even though her own health conditions severe limit her ability to walk. *See* 07/19/22 a.m. Tr. 85:14–15 ("Walking is not always possible in the long run.").

Although Defendants have argued that the Hrezi campaign should simply have increased the number of individuals collecting signatures, the trial evidence demonstrated the significant problems that the campaign encountered in attempting to do so despite doing "everything [they] possibly could to try to find any way to hire, to bring volunteers, to recruit people who can help out with this campaign." 07/19/22 a.m. Tr. 99:16–18 (Muad Hrezi).

The campaign posted advertisements seeking paid petitioners on several job websites, including Indeed, ZipRecruiter, and Handshake, and even offered to pay above market rate for these positions. *See* 07/19/22 a.m. Tr. 99:1–7 (Muad Hrezi). Their ability to recruit paid petitioners was limited: Not only is the labor market tight, *see id.* at 98:27–99:1, 99:15–15, but also the circumstances of the work—working outside in the hot sun, collecting signatures by knocking on door after door—made it unattractive, *see id.* at 99:7–13. And some would-be paid petitioners and volunteers, even after signing up and undergoing training, simply never showed up to petition. *See id.* at 100:1–8. "[E]ven with that the money spent," the campaign "wanted to spend more money on it," but we couldn't even find people to hire." *Id.* at 102:19–21.

The campaign created a fellowship program to provide additional assistance in the signature-collection efforts, but none of them were available to begin work until May because their college terms had not yet ended. *See* 07/19/22 a.m. Tr. 95:20–96:1; 07/19/22 a.m. Tr. 50:16–18 (Muneeka Munir); *id.* at 65:16–17. In addition, the fellowship program was costly: the paid fellows were paid $800 per month. *Id.* at 107:21–22.

There were other expenses as well. The campaign spent over $500 on paper alone. *See* 07/19/22 a.m. Tr. 97:3–5 (Muad Hrezi). The campaign paid for notaries because the petition pages needed to be notarized before they could be submitted, and notaries cost $5 per page in most places. *See id.* at 106:19–107:16. Gas was also a significant cost. *See id.* at 107:22–24. The campaign also had to purchase supplies and clipboards, including different sets of clipboards for when it was raining. *See id.* at 107:24–108:3. And the campaign purchased an electric scooter and an electric bicycle to accelerate the process of gathering signatures. *See id.* at 116:3–8. Adding all of the costs, including labor and gas reimbursements, the campaign estimated that it spent more than $20,000 on the petitioning process alone. 6/22/22 Tr. 76, 92 (Bazila Munir); 7/19/22 a.m. Tr. 101:7–8 (Muad Hrezi).

Should this Court determine that Connecticut's primary ballot access laws are strict on their face, this Court can proceed to apply strict scrutiny to the requirements. No further examination of the burden of the COVID-19 pandemic on petitioning would be necessary.

II. CONNECTICUT'S PRIMARY BALLOT ACCESS LAWS , IN THE CONTEXT OF AN ONGOING PANDEMIC, IMPOSE AN EVEN MORE "SEVERE" BURDEN

Even if Connecticut primary-ballot-access regime did not violate the First and Fourteenth Amendments on its face, those laws would nonetheless violate the federal constitution as applied in the context of the ongoing COVID-19 pandemic. In evaluating an as-applied challenge to ballot access laws, the Court must look to the day-to-day hardships imposed by the requirements in the context in which the laws were applied. This is true with or without COVID-19. *See, e.g.*, See, e.g., *Graveline v. Johnson*, 336 F. Supp. 3d 801, 817 (E.D. Mich. 2018) (granting injunction and reducing signature requirement from 30,000 signatures to 5,000), *aff'd Graveline v. Johnson*, 747 F.App'x 408, 416 (6th Cir. 2018); *Jones v. McGuffage*, 921 F.Supp.2d 888, 899 (N.D. Ill.

2013) (granting injunction and reducing candidate signature requirements in light of unusually difficult Chicago winter).

COVID-19 has presented additional burdens on the speech, associational, and political rights of candidates trying to obtain ballot access. In 2020, many courts granted relief from restrictive ballot access laws as-applied, considering COVID-19. *See, e.g.*, *Esshaki v. Whitmer*, 455 F. Supp. 3d 367, 382 (E.D. Mich.), *motion for relief from judgment denied*, 456 F. Supp. 3d 897 (E.D. Mich. 2020) (reducing signature requirement by 50%); *Faulkner v. Va. Dep't. of Elections*, CL 20-1456 (Va. Cir. Ct. Mar. 25, 2020) (reducing signature requirement sixty-five percent in light of COVID-19 restrictions); *Garbett v. Herbert*, 458 F. Supp. 3d 1328, 1353 (D. Utah 2020), *reconsideration denied*, No. 2:20-CV-245-RJS, 2020 WL 6572803 (D. Utah May 1, 2020), and *appeal dismissed*, No. 20-4051, 2020 WL 6326299 (10th Cir. May 4, 2020), and *appeal dismissed*, No. 20-4051, 2020 WL 6326299 (10th Cir. May 4, 2020) (reducing signature requirements by 32% and easing other ballot access restrictions).

"[B]ecause [plaintiff] brings an as-applied challenge, the court must consider her injury under the unique circumstances related to the COVID-19 pandemic." *Garbett*, 458 F.Supp.3d at 1344. Although Governor Lamont issued Executive Order 7LL to reduce the number of signatures required by 30%, allow electronic signatures, and allow more days for petitioning for the 2020 election cycle, no such order was implemented in 2022.

The burdens of COVID-19 on plaintiffs, their campaign, and their voters and supporters were critical. Muneeka Munir testified, for example, that "[s]ome people were concerned about Covid," and in particular "getting too close to sign" the petition forms. 07/19/22 a.m. Tr. 38:27–39:1; *see also id.* at 39:6–15. Others, she noted "didn't want to use the same pen that we had

been circulating." *Id.* at 39:1–2. Nicholas Accarpio confirmed these points in his testimony. *See id.* at 67:5–18.

The same is true for John Fussell. He explained that, "[c]ompared to when [he] gathered . . . signatures in prior years to this year," he "encountered a reluctance of folks to talk, to come to the door, to open the door." 07/22/22 a.m. Tr. 56:10–14; *see also id.* at 63:5–8; *id.* at 86:3–5 (Debra Cohen). Indeed, Mr. Fussell encountered individuals during his door-knocking who expressly acknowledged that they had Covid, in which case he was unable to seek the signatures. *Id.* at 56:14–16; *see also id.* at 60:17–23, 60:26–61:2.

Even campaign members who collected signatures acknowledged that they were "scared that [they] might catch Covid-19 while doing so." 07/19/22 a.m. Tr. 51:6–9 (Muneeka Munir); *see also id.* at 67:22–25 (Nicholas Accarpio). Mr. Fussell testified that he was "reluctan[t]" to collect signatures "because of Covid," *id.* at 54:15, and also that he was unwilling to "go out to large groups" and petitioned only "within [his] neighborhood" as a result, *id.* at 55:15–23.

These concerns were well-founded, as evidenced by the fact that four campaign petitioners tested positive for COVID. John Fussell testified that he contracted Covid while he was engaged in collecting signatures. *See* Tr. a.m. 56:24–26. He was required to "isolat[e] for ten days," during which time he "stopped petitioning." *Id.* at 57:6. And because he tested positive on May 29, he was "out for the rest of the petitioning process" and "couldn't petition any further." *Id.* at 57:12–13.

Even campaign members who did not themselves contract COVID-19 nonetheless felt its effects. Muneeka Munir was forced to quarantine for several days after close contact with a COVID-positive individual, *see* 07/19/22 a.m. Tr. 36:21–23, which reduced the signatures she was able to collect from "at least 50 signatures per day" to "[z]ero," *id.* at 37:7–8, 37:11.

As the Supreme Court of the United States has observed, "[n]o litmus-paper test will separate valid ballot access provisions from invalid interactive speech restrictions," *Buckley v. Am. Constitutional Law Found., Inc*., 525 U.S. 182, 192 (1999). All cases under the *Anderson-Burdick* framework require the courts to undertake a judgment call about the realistic burdens imposed on citizens' most vital and fundamental constitutional rights. In this case, under these factual circumstances, plaintiffs have presented enough evidence to prove that the Connecticut ballot access law requirements, as imposed in the context of COVID-19, had a "severe" impact on them, warranting this Court's exacting scrutiny.

III. EVEN IF THIS COURT CONCLUDES THE LAWS IMPOSE NO "SEVERE" BURDEN, THE COURT SHOULD APPLY STRICT SCRUTINY UNDER THE STATE CONSTITUTION

The *Geisler* factors all weigh in favor of providing voters and candidates with greater free speech, association, and political rights than what has been recognized under the federal constitution. To be more protective of speech, association, and political rights in this case, the Court should apply strict scrutiny to *all* ballot access restrictions, regardless of the first step of the *Anderson-Burdick* test. In essence, this Court should hold under the Connecticut Constitution what the Alaska Supreme Court has held under the Alaska Constitution in *Vogler v. Miller*, 651 P.2d 1, 3 (Alaska 1982) and its progeny. Moreover, this Court should not interpret the Supreme Court of the United States's decision in *Lopez Torres* to withdraw from Connecticut citizens their right to access the primary ballot without unjustified state-imposed burdens. Failing to provide voters and candidates greater protection for their speech, associational, and political rights would fail to take seriously our state constitution's role as an "instrument of progress" and its unique elevation of political rights as fundamental constitutional freedoms.

A. The Geisler Factors Weigh in Favor of Greater Protection for Candidates and Voters' Speech and Associational Rights

All of the *Geisler* factors weigh heavily in favor of providing greater protection under the Connecticut Constitution to the candidates and voters in this case than the protection of the United States Constitution.

1. The text of the Connecticut Constitution.

Connecticut precedents have given "independent vitality," *Linares*, 232 Conn. at 381, to article first, sections four and five of the Connecticut Constitution, which envision "more protection to freedom of speech," *id.*, than the United States Constitution. Multiple additional textual provisions in the Connecticut Constitution weigh in favor of recognizing greater protection to Plaintiffs than that offered by the United States Constitution under the factual and legal circumstances of this case:

Article First, Section 2:

> All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and they have at all times an undeniable and indefeasible right to alter their form of government in such manner as they may think expedient.

This Connecticut constitutional provision weighs in favor of the Plaintiffs because the restrictions on primary ballot access are, realistically, a restriction on the ability of the Plaintiffs and the voters whom they seek to represent to "alter their form of government in such manner as they may think expedient."

Article First, Sections 4 and 5, the Constitutional "free speech" provisions:

> SEC. 4. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.
>
> SEC. 5. No law shall ever be passed to curtail or restrain the liberty of speech or of the press.

These Connecticut constitutional provisions favor the Plaintiffs because, as it is well-established in Connecticut, they provide even greater protection to free speech than the United States Constitution. Because the "Anderson-Burdick" test is based on the First Amendment to the United States Constitution's protection of freedom of speech and association, these constitutional provisions favor the Plaintiffs.

Article First, Section 10:

> SEC. 10. All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

This Connecticut constitutional provision favors the Plaintiffs in seeking expedited injunctive relief for their claims in state court. Although the State Defendants have cited the Supreme Court of the United States's decision in *Purcell* to support their claims, that claim is based on federalism concerns; namely, that *federal* courts should not intervene on a late date in *state* elections. The *Purcell* doctrine has never been applied by the Supreme Court of the United States to a state court's modification of rules in a state election. Because the Connecticut Constitution protects the rights of people, like the Plaintiffs, who come to court to seek "justice administered without sale, denial, or delay," this constitutional provision favors the plaintiffs. *See also Rell*, 295 Conn. at 253 ("concerns over complications with respect to remedies for violations will not lead us to misinterpret substantive provisions of the constitution.").

Article First, Section 14:

> The citizens have a right, in a peaceable manner, to assemble for their common good, and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address or remonstrance.

This Connecticut constitutional provision adds significant weight to the Plaintiffs' claims because it adds additional constitutional support for citizens' right to freedom of association and

– specifically – the right to assemble "by petition." This shows how the many restrictions and requirements of Connecticut laws burden the most sacred rights protected by the Connecticut Constitution. This adds greater support that the Connecticut Constitution offers more protection to voters and candidates than the federal constitutional "*Anderson-Burdick*" test.

Article First, Section 20:

> SEC. 20. No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability.

This Connecticut constitutional provision, too, supports the Plaintiffs, because the specification of "political rights" in the Connecticut Constitution's "Equal Protection Clause" shows added significance, importance, and substance to the foregoing constitutional provisions that have already been found to provide greater protection to freedom of speech than the federal constitution. The addition of physical or mental disability to the Connecticut Constitution's "Equal Protection Clause" in 1984 adds added importance to lowering the barriers to political participation and inclusion, by expanding free speech, association, and expression protections beyond the protections of the "*Anderson-Burdick*" test of the First and Fourteenth Amendments to the United States Constitution.

It should also be noted that each of these constitutional provisions is included in the first article of the Connecticut Constitution—again signifying their importance to the constitutional structure of the state. Additional constitutional provisions elsewhere in the Constitutional also support the Plaintiffs' claims:

Article Sixth, Section 1:

> Every citizen of the United States who has attained the age of eighteen years, who is a bona fide resident of the town in which he seeks to be admitted as an elector

> and who takes such oath, if any, as may be prescribed by law, shall be qualified to be an elector.

This Connecticut constitutional provision was amended to its current text in 1976 to expand the right to vote. The Connecticut constitution's increasing expansion of the right to vote lends greater support to the Plaintiffs. At the same time that this constitutional provision was enacted, which conformed with the federal constitution, the state enacted Article Sixth, Section 11, which allows citizens "who will have attained the age of eighteen years on or before the day of a regular election may apply for admission as an elector within the period of four months prior to such election," to allow them to "become an elector on the day of his or her eighteenth birthday." In this way, Connecticut showed that it is always trying to give voters greater protections and rights than the rights and protections offered by the federal constitution. In 1980, the 1976 amendment allowing pre-registration was broadened further:

> Any citizen who will have attained the age of eighteen years on or before the day of a regular election may apply for admission as an elector at such times and in such manner as may be prescribed by law, and, if qualified, shall become an elector on the day of his or her eighteenth birthday.

And in 2008, in the most recent amendment to the Connecticut Constitution, the Constitution expanded the right to vote in primaries to citizens under the age of 18, who will become 18 years old before the general election:

> Any citizen who will have attained the age of eighteen years on or before the day of a regular election may apply for admission as an elector at such times and in such manner as may be prescribed by law, and, if qualified, shall become an elector on the day of his or her eighteenth birthday. Any citizen who has not yet attained the age of eighteen years but who will have attained the age of eighteen years on or before the day of a regular election, who is otherwise qualified to be an elector and who has applied for admission as an elector in such manner as may be prescribed by law, may vote in any primary election, in such manner as may be prescribed by law, held for such regular election.

Not only does this constitutional amendment support that the Connecticut Constitution protects voters and candidates' rights more than the federal constitutional, but also that this protection applies specifically to voters' and candidates' rights in party primaries.

Article Sixth, Section 4:

> SEC. 4. Laws shall be made to support the privilege of free suffrage, prescribing the manner of regulating and conducting meetings of the electors, and prohibiting, under adequate penalties, all undue influence therein, from power, bribery, tumult and other improper conduct.

This Connecticut constitutional provision stands for the proposition that restrictions on ballot access, in Connecticut, should never have the effect of not "support[ing] the privilege of free suffrage," but must be narrowly tailored toward the express purposes of "prohibiting, under adequate penalties, all undue influence therein, from power, bribery, tumult, and other improper conduct." As the evidence will show in this case, the ballot access requirements challenged by the plaintiffs do far more than simply prohibit undue influence, but sweep far more broadly, to the point where they fail to "support the privilege of free suffrage" within the state, by unfairly and unduly restricting voters' choice of candidates.

Article Sixth, Section 5:

> SEC. 5. In all elections of officers of the state, or members of the general assembly, the votes of the electors shall be by ballot, either written or printed, except that voting machines or other mechanical devices for voting may be used in all elections in the state, under such regulations as may be prescribed by law. *No voting machine or device used at any state or local election shall be equipped with a straight ticket device.* The right of secret voting shall be preserved.

This Connecticut constitutional provision, amended in 1986 to include the current text, supports the proposition that the Connecticut Constitution favors the constitutional rights of individual voters and candidates over the constitutional rights of political parties. Before 1986, the Connecticut political system was dominated by the phenomenon of the "straight party lever."

By the 1986 constitutional amendment, voters' individual right to vote for individual candidates was elevated above the power and privilege of political parties, as the "straight ticket device" was formally abolished in the state.

In 1980, **Article Sixth, Section 9** of the Connecticut Constitution was repealed. It previously said that:

> SEC. 9. Any person admitted as an elector in any town shall, if he removes to another town, have the privileges of an elector in such other town after residing therein for six months. The general assembly shall prescribe by law the manner in which evidence of the admission of an elector and of the duration of his current residence shall be furnished to the town to which he removes.

The repeal of this Constitutional provision shows that Connecticut's Constitution, always an "instrument of progress," [cite], continues to progress in its embrace of fewer restrictions on freedom of association and exercise of the franchise.

Article Sixth, Section 10, concerning who may run for office, has undergone a similar evolution to Connecticut's constitutional provisions on voting. In 1970, the right to run for office was extended to everyone over the age of 21; in 1980, the right to run for office was expanded to its current text:

> Every elector who has attained the age of eighteen years shall be eligible to any office in the state, but no person who has not attained the age of eighteen shall be eligible therefor, except in cases provided for in this constitution.

By separately setting out the right of candidates to run, in addition of the right of voters to vote, Connecticut's Constitution again separates and elevates the importance of the rights that the Plaintiffs seek to vindicate in this case. The multitude of applicable state constitutional provisions implicated by this case should cause this court to conclude that the first *Geisler* factor weighs strongly in favor of the Plaintiffs' state constitutional claim.

2. Connecticut precedents.

It is already well-established that for freedom of speech, Connecticut courts examining the Connecticut Constitution start with the federal constitution as a floor, and the Connecticut Constitution provides more expansive protection. *Linares*, 232 Conn. at 381; *see also State v. DeLoreto*, 265 Conn. 145 (2003).

Interpretation of the Connecticut Constitution is not entirely bound by precedents, but guided by the values of precedents, because "[t]he Connecticut Constitution is an instrument of progress, it is intended to stand for a great length of time and should not be interpreted too narrowly or too literally so that it fails to have contemporary effectiveness for all of our citizens." *State v. Dukes*, 209 Conn. 98, 115 (1988) (concluding that the state constitution affords greater protection to citizens subject to automobile searches than the federal constitution). The Connecticut Constitution is a vehicle for applying values discerned through history to modern conditions to expand the rights and freedoms that are Connecticut's birthright.

In their pre-trial brief, DE #121 at 31, the State cited *Gonzalez v. Surgeon*, 284 Conn. 573 (2007), for the proposition that state courts apply *Anderson-Burdick*. But as the Supreme Court noted in *Gonzalez*, 284 Conn. at 587, n.13, Gonzalez never separately briefed her free speech and associational rights under the state constitution, and the Court therefore "confine[d] [its] analysis to the federal constitutional claim." *Id.*

It is also well-settled that state constitutional analysis is case-specific, and that even if the state constitution affords greater protections "in certain circumstances," the court must consider the constitutional provision "in the circumstances relevant to this case," *Ramos v. Town of Vernon*, 254 Conn. 799, 837 (2000), in this case, in the context of the COVID-19 pandemic. *See also Dukes*, 209 Conn. at 114-15 ("We must interpret the constitution in accordance with the

demands of modern society or it will be in constant danger of becoming atrophied and, in fact, may even lose its original meaning.").

It is well-established in Connecticut precedent that public policy favors greater political participation in the electoral process. As the Connecticut Supreme Court said in *Butts v. Bysiewicz*, "[a]mbiguities in election laws are construed to allow for the greatest scope for public participation in the electoral process, to allow candidates to get on the ballot, to allow parties to put their candidates on the ballot, and most importantly to allow the voters a choice on Election Day." 298 Conn. 665, 675 (2010). This principle has existed for nearly 100 years in Connecticut jurisprudence. *See Denny v. Pratt*, 105 Conn. 256, 260 (1926) ("electors should not be deprived of their voters, honestly cast for the candidate of their choice, as a result of doubtful judicial construction, a too strict regard for the letter of the statutes, or resort to nice or technical refinements of interpretation or application").

Governor Lamont's Executive Order 7LL in 2020, which substantially lowered the requirements for primary ballot access in a manner that, if done again in 2022, would have allowed for Mr. Hrezi to obtain primary ballot access, also stands as a Connecticut precedent. During the COVID-19 pandemic, the Governor has taken on an additional role as lawmaker, one which the Connecticut Supreme Court has recognized.

Although the Governor's emergency powers briefly elapsed, they have now been re-enacted. This goes to show both the authority and the responsibility of public officials in Connecticut to safeguard the right to run for office and provide voters with a choice at the ballot box in elections, including primary elections. Because Connecticut precedents strongly favor increasing candidates and voters' access to primary ballots, and relieving voters and candidates

of their burdens when a pandemic is affecting the state, the second *Geisler* factor weighs heavily in favor of the Plaintiffs in this case.

3. Federal precedents.

The values of venerated federal precedent further underline the importance of the issues in this case. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Burdick v. Takushi*, 504 U.S. 428, 441 (1992). *See also Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 179 (1979). "[T]he rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters." *Bullock v. Carter*, 405 U.S. 134, 143 (1972) (primary ballot access case).

The Supreme Court of the United States has long concluded that when a state holds primaries, its regulation of the primary election process is state action that can violate the First, Fourteenth, and Fifteenth Amendments to the Constitution. *See, e.g.*, *Smith v. Allwright*, 321 U.S. 649, 663-64 (1944) & *Terry v. Adams*, 345 U.S. 461, 469-70 (1953) (concluding in the so-called "White Primary Cases" that primary elections and pre-primary activity that restricted access to the primary ballot were sufficiently state action to trigger application of the Reconstruction Amendments); *Gray v. Sanders*, 372 U.S. 368, 375 (1963) (striking down "county unit system" as basis for counting votes in primary elections for statewide offices because it weighed rural votes more heavily than urban votes); *Bullock*, 405 U.S. at 146-47 (striking down excessive filing fees for primary ballot access even though candidates could gain ballot access in general election without payment of fees); *Kusper v. Pontikes*, 414 U.S. 51, 59

(1973) (striking down law prohibiting a person from voting at primary if they voted at primary of another political party within preceding 23 calendar months).

"[T]he right to vote is 'heavily burdened' if that vote may be cast only for one of two candidates in a primary election at a time when other candidates are clamoring for a place on the ballot." *Lubin v. Panish*, 415 U.S. 709, 716 (1974) (requiring states to offer alternative to filing fees for candidates in primary elections who cannot afford them).

Although "the processes by which political parties select their nominees are not wholly public affairs that states may regulate freely," *California Democratic Party v. Jones*, 530 U.S. 567, 572-73 (2000) (striking down "blanket primary" law that required parties to allow non-members to vote in party primaries), the Supreme Court has long "acknowledged an individual's associational right to vote in a party primary without undue state-imposed impediment." *New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 204 (2008) (citing *Kusper*, 414 U.S. at 57).

Two federal United States District Court decisions also concern the same subject matter of this case: *Campbell v. Bysiewicz*, discussed *supra*, and *Gottlieb v. Lamont*, currently on appeal, in which the undersigned is plaintiff's counsel. *Campbell v. Bysiewicz* should have far greater relevance in a *Geisler* analysis. In response to the *Campbell* decision, the Connecticut General Assembly passed Public Act 03-241, and the State of Connecticut withdrew its appeal of the preliminary injunction. That the State never proceeded with an appeal of that decision stands as an acknowledgment that the Convention System of primary ballot access was – and is – a significant impairment of constitutional rights that requires a practical alternative. *Gottlieb* threatens to withdraw the protections of *Campbell* because of an intervening Supreme Court

decision, *Lopez Torres*. As discussed *infra* this goes against Connecticut's *state* constitutional tradition and is unpersuasive.

4. Sister states' precedents.

In observing the Connecticut principle that Connecticut public policy favors "allow[ing] for the greatest scope for public participation in the electoral process, to allow candidates to get on the ballot, . . . and most importantly to allow the voters a choice on Election Day," the Connecticut Supreme Court in *Butts* cited and quoted our sister state of New Jersey's decision in *New Jersey Democratic Party, Inc. v. Samson*, 175 N.J. 178, 190 (2002). As stated above, this principle has existed in Connecticut since at least 1926. *See Denny*, *supra*. But this principle has existed for nearly as long in New Jersey as well. *See Wene v. Meyner*, 13 N.J. 185 (1953) (election laws must be liberally construed to protect voters' franchise) (citing *Carson v. Scully*, 89 N.J.L. 458, 465 (Sup. Ct. 1916), aff'd 90 N.J.L. 295 (E & A 1917)).

Another strong other state precedent is the fact that Connecticut's restrictions on ballot access are among the strictest in the nation. *See supra*, pp. 22-24 (comparing Connecticut ballot access laws to the laws of other states). Thus, any lack of court precedent is only indicative that in other states, the issues presented by this case do not even need to be litigated. Thus, the fourth *Geisler* factor weighs strongly in favor of recognizing a Connecticut constitutional right to stronger ballot access than that protected by the federal constitution.

5. Historical insights.

The Connecticut Supreme Court has recognized that "our constitution's speech provisions reflect a unique historical experience and a move toward enhanced liberties, particularly those liberties designed to foster individuality. . . ." *Trusz*, 319 Conn. at 206 (citing *Linares*, 232 Conn. at 385-86). This is supported in the specific context of access to primary

elections in Connecticut. Primary elections are the only elections which, in Connecticut, citizens may vote before they turn 18 years of age. Primary elections are therefore recognized as an important platform for the voting rights, speech rights, and associational rights of citizens, in the most recent amendment to the Connecticut Constitution, enacted in 2008.

This expansion in the right of citizens to vote in primaries is commensurate with the expansion, after *Campbell v. Bysiewicz*, of avenues for primary ballot access—though Plaintiffs have shown and will continue to show that the new avenues of primary ballot access were options in form more than in substance, because the available methods remain severely burdensome.

Although restrictions on ballot access have existed for decades, the right to access to the ballot has existed for centuries. Pre-1818, the control of the ballot was left to the individual voter, and the state played no role in printing the ballot or controlling the candidates who could be listed. *See* Richard Winger, *History of U.S. Ballot Access Law for New and Minor Parties*, THE ENCYCLOPEDIA OF THIRD PARITES IN AMERICA, Vol. 1 (2000); *see also* A. Ludington, *American Ballot Laws, 1888-1910* (1911). The invention of the state ballot originated in the late nineteenth century, with state laws allowing free and open ballot access as inclusive with as many voter options as possible, with few restrictions.

This historical insight into the people's control over ballots at the founding of the republic is augmented by historical insight into the role of challengers against incumbents using the ballot box as an expressive forum for their ideas. "History has amply proved the virtue of political activity by minority, dissident groups, which innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted . . . . The absence of such voices would be the symptom of grave illness in our society." *Sweezy v. New Hampshire*,

354 U.S. 234, 250-51 (1957). Following this insight, the lack of primaries in Connecticut under the primary ballot access scheme in the state, both before and after *Campbell v. Bysiewicz*, is "the symptom of grave illness," *Sweezy*, in our state's political system today. Thus, the fifth *Geisler* factor weighs in favor of the Plaintiffs as well.

6. Public policy including economic and sociological considerations

The public policy factor favors the Plaintiffs in many respects. As observed above, it has long been the public policy of the state to "allow for the greatest scope for public participation in the electoral process, to allow candidates to get on the ballot, . . . and most importantly to allow the voters a choice on Election Day."

Structural incentives further support the public policy analysis. In a famous footnote in the case *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938), Justice Stone suggested that the interests that should be given extraordinary constitutional protection are not only those expressly contained in the constitutional text but also those interests unlikely to receive adequate consideration in the political process, most famously the interests of "discrete and insular minorities." The field of ballot access is one in which the interests of challengers – who are likely to challenge the very jobs of legislators voting on the restrictions – are least likely to receive any, let alone adequate, consideration. But the price of inadequate consideration of challengers' interests is deprivation of the rights not only of challengers, but also the voters who would have voted for them if they had accessed the ballot. This disadvantage placed on people's constitutional rights – even if they are a small minority unable to ultimately win the election – should never be tolerated under the Connecticut Constitution.

Defendants presented no evidence of any public policy or sociological or economic considerations that weigh against relief. No one has suggested that too many people are running

for office, or that too many people would run for office if the rules were easier to obtain ballot access. Simply put, strict ballot access laws like Connecticut's are a solution in search of a problem to solve, and their operation fails to advance any articulable goal of public policy. Deferential treatment of ballot access laws ignores their effect, which is to prevent serious challengers from being able to challenge their elected officials, and the obviously perverse incentives that this effect has on legislators' willingness to revise the laws to make them less burdensome.

A better example of a malfunctioning political process is hard to find. Discriminatory and restrictive ballot access laws constitute self-interested political action. They are unnecessary to promote any legitimate state interest; they infringe upon the constitutional rights of candidates and voters; and they impose anticompetitive restrictions on the political process, undermining its democratic character and purpose by excluding legitimate candidates and limiting the role of voters. Far from deferring to legislative judgment in these cases, the Court should recognize that that judgment is suspect and invalidate legislation like the challenged laws here, which are an abuse of state power.

The sixth *Geisler* factor therefore favors the Plaintiffs. The Connecticut Constitution should therefore not tolerate the primary ballot access laws, and this Court should therefore hold that the primary ballot access laws violate the Connecticut Constitution

B. Applying Strict Scrutiny Would Pose No Issues For Election Administration

Applying strict scrutiny to all ballot access laws will not lead to undesirable or unworkable results. As mentioned above, at least one other state has applied strict scrutiny to ballot access laws for decades, and many states put very few restrictions on ballot access altogether. Strict scrutiny will not mean that Connecticut cannot regulate access to the primary ballot. It will only mean that such regulations are constitutional "only if they are narrowly

tailored measures that further compelling governmental interests." *Adarand Constructors, Inc. v. Pena*, 115 S. Ct. 2097, 2113 (1995) (concluding that strict scrutiny must be applied even to "benign" racial classifications imposed by the federal government); *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 670 (1966) (stating that the Court has "long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined."). State interests may rise to a compelling level in the field of ballot access. *See, e.g.*, *Storer v. Brown*, 415 U.S. 724, 730 (1974) (applying strict scrutiny while upholding ballot access law for presidential elections).

C. *Lopez Torres* Is Inapplicable as a Matter of State Constitutional Law

Lopez Torres is distinguishable and the district court's reliance on it in *Gottlieb* was erroneous. But even if *Lopez Torres* applies as a matter of federal constitutional law, that does not resolve whether it applies as a matter of state constitutional law.

Connecticut case law disfavors, as a matter of state constitutional law, decisions of the Supreme Court of the United States that retreat from constitutional protections that Connecticut citizens have enjoyed. To interpret *Lopez Torres* to impliedly reverse the District Court's decision in *Campbell v. Bysiewicz*, however, would do just that.

"Connecticut's appellate courts have not been hesitant to continue to grant its citizens the same protection as did the 'old' federal decisions, when the United States Supreme Court has retreated from a previously enunciated broad protection reading of a federal constitutional provision." *Trusz v. UBS Realty Invs., LLC*, 319 Conn. 175, 195 (2015) (internal brackets omitted) (citing *State v. DeFusco*, 27 Conn.App. 248, 256 (1992), aff'd 224 Conn. 627 (1993). That is why, in 1990, the Connecticut Supreme Court in *State v. Marsala*, 216 Conn. 150 (1990), refused to follow *United States v. Leon*, 468 U.S. 897 (1984), and gave Connecticut citizens the

protection of the exclusionary rule undiluted by a "good faith exception," as allowed in *Leon*. *Trusz*, 319 Conn. at 195 n.14. *Geisler*, too, involved the Connecticut Supreme Court's refusal to apply a federal constitutional exception to the exclusionary rule. *Id.*

Connecticut regularly "adhere[s] to [the] old rule that provides broader protection than the new rule," *id.*, consistent with the principle that the Connecticut Constitution is an "instrument of progress." *Id.* (citing *Linares*, supra, 232 Conn. at 382). It should do the same here. If *Lopez Torres* is found to be applicable at all to the federal constitutional claims and not distinguishable and differentiated, it should be held not to apply to the state constitutional claims.

To determine that *Lopez Torres* undercuts *Campbell v. Bysiewicz*, as Judge Hall concluded it does in *Gottlieb*, would "violate the entrenched constitutional expectations of the state's citizenry," *Trusz* at 195, in this case, the constitutional expectation that they should be protected from unjustified impediments to primary ballot access. (Of course, Judge Hall had no opportunity to rule on state constitutional claims, which were not brought in *Gottlieb*.) *Lopez Torres* should therefore be eschewed as a matter of state constitutional law, if it is interpreted to apply at all to this case.

IV. CONNECTICUT'S PRIMARY BALLOT ACCESS LAWS FAIL STRICT SCRUTINY

Depending on whether the Court concludes that Connecticut's primary-ballot-access-laws impose a "severe" burden on Plaintiffs' First Amendment rights, the second step of the *Anderson-Burdick* framework will require the Court to apply either strict scrutiny, asking "whether the challenged restriction is 'narrowly drawn to advance a state interest of compelling importance," *Yang*, 960 F.3d at 129 (quoting *Burdick*, 504 U.S. at 434) (citations omitted), or a balancing inquiry that considers "the legitimacy and strength of [the government's] interests and the extent to which those interests make it necessary to burden the plaintiff's rights." *Ibid.*

(quoting *Anderson*, 460 U.S. at 789) (citations omitted). Connecticut's primary-ballot-access laws fail either test.

As an initial matter, the burden rests with the state—not the plaintiffs—to demonstrate the interests that supposedly justify the challenged state laws. *Anderson* and *Burdick* themselves emphasized that the relevant issue involved assessing "'the precise interests *put forward by the State* as justifications for the burden imposed by its rule.'" 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789) (emphasis added); *see also Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364 (1997) (examining "the State's asserted regulatory interests"). And this, in turn, demands evidence. *See*, *e.g.*, *Wood v. Meadows*, 117 F.3d 770, 776 (4th Cir. 1997) (requiring "further factual development . . . as to the interests of the Commonwealth in imposing that deadline").[6] Defendants choice not to present any evidence at trial with respect to Connecticut's supposed interest should foreclose any argument that those interests somehow are sufficient to justify the challenged restrictions.

Even assuming that the Court could impute interests to the state, however, Connecticut's ballot access laws are unconstitutional. Plaintiffs will start with strict scrutiny then turn to the balancing test in the next section of this brief.

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[6] As the Middle District of Tennessee recently observed:

> state officials offered no evidence of any reason to require the operator of a voter registration drive to report his activities to the government prior to a drive, no evidence justifying the policy of imposing law's reporting and training requirements only on people or organizations receiving remuneration for their voter registration work, and no sufficient basis for requiring that registration workers and volunteers receive mandatory government training. U.S. Const. Amend. 1; Tenn. Code Ann. § 2-2-142(a), (e), (f), (g).

Tennessee State Conference of N.A. A.C.P. v. Hargett, 420 F.Supp.3d 683 (M.D.Tenn., 2019).

If this Court concludes that Connecticut's primary-ballot-access laws impose a severe burden on Plaintiffs' First and Fourteenth rights, then the *Anderson-Burdick* framework requires the Court to apply strict scrutiny. Connecticut's primary-ballot-access laws cannot satisfy this demanding inquiry because those laws are "narrowly drawn to advance" any state interest. *See Burdick*, 504 U.S. at 434; *Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 186 (1979) (noting that the narrow-tailing requirement demands that the state use the "least restrictive means of protecting [its] objective).

As the Supreme Court of the United States has noted, there is "[t]here is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot." *Jenness*, 403 U.S. at 442. But the length of the petitioning window and the number of signatures required are plainly not the least restrictive means to protect that interest. The experience in other states demonstrates that lengthier signature-collection periods, and lower numbers of signatures, are sufficient to demonstrate a "significant modicum of support," and there is no reason to believe that those states have had a problem with overcrowded ballots as a result. But this Court need not rely on the experiences of other states: Governor Lamont's executive order adjusting the petitioning requirements in light of COVID—by increasing the petitioning window by two days, and decreasing the number of signatures required by 30%—demonstrates that the Connecticut government *itself* believes that less enormous signature requirements are sufficient to serve its interests.

Governor Lamont's executive order also demonstrates that other restrictions on the petitioning process are not the least restrictive means of advancing the state's interests. Whatever interests might in theory be served by requiring petitioners to collect signatures only in person,

see Conn. Gen. Stat. § 9–404b(d), the executive order demonstrates that electronic signatures are sufficient to protect those interests with no adverse consequences.

The requirement that the petition circulators be "enrolled party member[s] of a municipality in this state" (Conn. Gen. Stat. § 9–404b(d)) does not appear to serve any state interest whatsoever. It does not advance the state interest in ensuring that the candidate has a "significant modicum" of support because the separate requirement that *the individuals signing the petition* are party members within the relevant district—who, in the context of a congressional race, will exceed the number of petitioners by thousands—already fulfills that interest. The fact that a circulator might be a Democrat from Massachusetts or New York, as opposed to Connecticut, has no bearing on whether 2% of enrolled party members in the district support the campaign. At a minimum, the geographical restriction on petition circulators is not the least restrictive means of protecting the government's interests.

With respect to the requirement that each petition page be notarized, *see* Conn. Gen. Stat. § 9–404b(d), the statute *separately* requires that the petitioner sign each page "under the penalt[ies] of false statement" attesting "that the circulator either knows each such signer or that the signer satisfactorily identified himself or herself to the circulator and that the spaces for candidates supported, offices sought and the political party involved were filled in prior to the obtaining of the signatures," *ibid.* This provision, not a separate notary requirement, is the least restrictive means of ensuring the integrity of the signature-collection process.

V. CONNECTICUT'S PRIMARY BALLOT ACCESS LAWS FAIL THE *ANDERSON-BURDICK* BALANCING TEST

Even if the Court were to conclude that Connecticut's primary-ballot-access laws do not impose severe burdens on Plaintiffs' rights, it nonetheless should conclude that those laws are unconstitutional. For the reasons explained above, whatever governmental interests might justify

those laws, its "legitimacy and strength" is limited here, where the state either has demonstrated that lesser burdens would suffice to protect those interests, as in the case of the executive order, or has adopted other, less-burdensome provisions that already protect those interests. On the other side of the balance, the First Amendment rights asserted by Plaintiffs rise to the highest level in our constitutional sphere. And it can hardly be said "necessary" for Connecticut to burden those rights when it could protect its interests through means that do not. The balancing test under *Anderson-Burdick* therefore yields the same result as strict scrutiny: Connecticut's primary-ballot-access laws must be struck down.

VI. THE POSSIBILITY THAT CANDIDATES MIGHT QUALIFY THROUGH NOMINATING CONVENTIONS FAILS TO CURE THE CONSTITUTIONAL VIOLATION

The State Defendants argue that the burdens imposed by Connecticut's petitioning requirements for ballot access are irrelevant because Mr. Hrezi could have qualified for the Democratic primary through "be[ing] endorsed at a nominating convention" or "receiv[ing] 15% of the votes of delegates in any vote at the nominating convention." State Def. Pre-Trial Br. 34.

As the State Defendants emphasize, "'where *an adequate means of ballot access* exists, the addition of another means of access to the same ballot only increases access and thus is constitutional unless it is wholly irrational.'" *Ibid.* (quoting *Lopez Torres v. N.Y. State Bd. of Elections*, 462 F.3d 161, 194 (2d Cir. 2006), *rev'd on other grounds*, 552 U.S. 196 (2008)) (emphasis added and omitted). The flaw in the State Defendants' argument is that the possibility of primary-ballot qualification through a nominating convention—*as provided by Connecticut law*—does not provide "an adequate means of ballot access." *Lopez Torres*, 462 F.3d at 194.

The State Defendants rely principally on the Supreme Court's in *N.Y. State Bd. of Elections v. Lopez Torres*, 552 U.S. 196 (2008), which upheld as constitutional a "system of candidate selection whereby the *only* means of appearing on the ballot is by receiving the

endorsement of delegates at a nominating convention," State Def. Pre-Trial Br. 35 (citing 552 U.S. at 206–07). But that is not this case.

As the Supreme Court recognized in *Lopez Torres*, the rights of political parties are "circumscribed . . . when the State gives the party a role in the election process," 552 U.S. at 207, because individuals have the "associational right to vote in a party primary without undue state-imposed impediment," *id.* at 204. Plaintiffs in this claim that their right to vote in party primaries are being unjustifiably burdened by severe requirements for ballot access. Plaintiffs are not claiming their entitlement to "a fair chance of prevailing in their parties' candidate-selection process." *Id.* at 207. *Access to the ballot* is no assurance of a fair shot to prevail. That would require a majority of the votes of party members. Restricting ballot access, by contrast, harms not only the candidates' shot at winning, but also voters' ability to choose their party's standard-bearer, as explained by the district court's ruling in *Campbell*, 213 F.Supp.2d at 152:

> "While the State has an interest in limiting challengers who appear on the primary ballot to those who have significant modicum of support among eligible voters, a prospective candidate who enjoys such a significant modicum of support should have a reasonable opportunity to use it. 'Restrictions on access to the ballot burden two distinct and fundamental rights, the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters ... to cast their votes effectively.' *Rockefeller,* 74 F.3d at 1377 (internal quotation marks omitted). Voters comprising a candidate's significant modicum of support should not be disenfranchised by an overly burdensome primary ballot process that bars their candidate from appearing on the primary ballot."

Lopez Torres made clear that "[n]one of our cases establishes an individual's constitutional right to have a 'fair shot' *at winning the party's nomination* . . . ." 552 U.S. at 206 (emphasis added). But that is not at all what Plaintiffs are seeking in this case. They only seek access to a state ballot without unjustified state-imposed burdens on that access.

Moreover, *Lopez Torres* is distinguishable because the Court noted that the candidate selection process in New York provided party members with a method for voting on the

delegates for the conventions in that case. *See, e.g.*, 552 U.S. at 204-205 ("Respondents' real complaint is not that they cannot vote in the election for delegates, ..."). As the Court noted, 552 U.S. at 200, the delegates at the conventions in *Lopez Torres* could be challenged in a primary election by collecting 500 signatures in 37 days, which the Court concluded was "entirely reasonable." *Id.* at 204. Here, by contrast, primaries for the delegates of party nominating conventions were eliminated by the state in Public Act 03-241, which established the petitioning process as an alternative to ballot access by nominating convention. In this case, therefore, plaintiffs do complain that they "cannot vote in the election for delegates." 552 U.S. at 204-205. Petitioning processes therefore must be available for candidates seeking ballot access—and, if the petitioning process is severely burdensome, Connecticut's statutory framework survive scrutiny, notwithstanding the potential availability of the party convention process.

VII. PRESENTING NO EVIDENCE, DEFENDANTS FAILED TO PROVE LACHES

The State Defendants assert, as a special defense, that the equitable doctrine of laches bars Plaintiffs' federal and state constitutional claims. *See* State Def. Answer & Special Defense at 10; *see also* State Def. Pre-Trial Br. 20–24. The Larson Campaign also argued in their pre-trial briefing that Plaintiffs' claims are barred by laches.

As the "'part[ies] alleging laches,'" the "'burden is on [Defendants] to establish that defense.'" *Price v. Indep. Party of CT—State Cent.*, 323 Conn. 529, 544 (2016) (quoting *Cummings v. Tripp*, 204 Conn. 67, 88 (1987)). To satisfy that burden, Defendants must prove both that Plaintiffs "'inexcusabl[y] delay[ed]'" in bring this lawsuit, and that the delay "unduly prejudice[d]" Defendants. *Ibid.* (quoting *Cummings*, 204 Conn. at 88); *see also*, *e.g.*, *Fay v. Merrill*, 338 Conn. 1, 22 (2021) ("First, there must have been a delay that was inexcusable, and, second, that delay must have prejudiced the defendant."). Defendants have failed to prove either element of their laches defense.

A. Defendants Have Adduced No Evidence of Prejudice Caused By Any Delay By Plaintiffs.

"The burden is on the party alleging laches to establish that defense." *Price*, 323 Conn. at 544 (citation omitted). Defendants' assertion of laches fails at the outset because they have not adduced any evidence of prejudice. Indeed, Defendants did not present any evidence at all during trial, except for the brief testimony on the first day of the statutory claims. No evidence was presented about the prejudice of, for instance, moving the primary date.

Defendants' failure to present evidence of prejudice cannot be cured through post-trial arguments by counsel that Defendants have been prejudiced.

The laches defense is "intensely factual [in] nature" and requires "necessary factual development on the trial court record." *Fay*, 338 Conn. at 21. As the Connecticut Supreme Court has made clear, a "'conclusion that a plaintiff has been guilty of laches is one of fact for the trier and not one that can be made [as a matter of law], unless the subordinate facts found make such a conclusion inevitable.'" *Ibid.* (quoting *Glastonbury v. Metro. Dist. Comm'n*, 328 Conn. 326, 341–42 (2018)) (alternation in original). And, here, such a "conclusion" is far from "inevitable." No evidence has been presented on the inability of the State to comply timely with this Court's orders. To the extent Defendants believe that any other potential source of prejudice is relevant, it was their burden to prove it—and they did not even attempt to do so.

B. Defendants Have Failed To Prove Any Inexcusable Delay By Plaintiffs In Bringing This Lawsuit.

Defendants also have failed to prove any inexcusable delay by Plaintiffs in bringing this lawsuit. Their arguments to the contrary rely on treating Plaintiffs as a single unit, but that ignores that there are two different interests being asserted by Plaintiffs here.

Muneeka Munir, Bazila Munir, and John Fussell are not candidates for office and do not seek to appear on any primary ballot. Instead, their First Amendment rights involve the ability to

vote in the primary election for the candidate of their choice. And those rights were not violated until the Secretary of State determined that Mr. Hrezi would not appear on the primary ballot. The Secretary of the State did not determine this until *after* Mr. Hrezi brought suit. Defendants' arguments on laches—which depend on whether the Hrezi campaign might have sued for ballot access at some earlier point—are therefore misplaced.

Respectfully submitted,

PLAINTIFFS

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CERTIFICATION

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